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9 **BEFORE THE HEARING EXAMINER FOR THE CITY OF RENTON**

10)
11)
12 **RE: The Reserve at Tiffany Park**)
13 **Preliminary Plat**)

FINAL DECISION

14)
15)
16 **Preliminary Plat and SEPA Appeals**)
LUA13-001572, ECF, PP, CAE)

17 **I. SUMMARY**

18 The applicant requests preliminary plat approval for the subdivision of 21.66 acres into single-family
19 residential lots and several critical areas tracts located at the dead end of SE 18th Street and bordered
20 by the Cedar River Pipeline along the southern property boundary and the Mercer Island Pipeline
21 along the eastern property boundary. Two appeals of a mitigated determination of nonsignificance
22 (“MDNS”) issued under the Washington State Environmental Policy Act (“SEPA”) were
23 consolidated with the review of the preliminary plat. The Tiffany Park Woods Advocacy Group
24 (“TPWAG”) filed one of the two SEPA appeals and the applicant submitted the second appeal. The
25 preliminary plat is approved subject to conditions. The TPWAG SEPA appeal is denied. The
26 applicant SEPA appeal is sustained, in part.

TPWAG raised numerous issues in its SEPA appeal regarding the conversion of the 21.66 acre
subject property from a community recreational resource to a residential subdivision. The property
is entirely undeveloped and is covered with trails, tree forts and other similar structures that reveal

1 years of community use. In its SEPA appeal TPWAG argues that the loss of this long-time
2 recreational use is an environmental impact that should be subject to SEPA review. As detailed in
3 this decision, the fact that the applicant has allowed neighbors to use its property in the past (or
4 worse, the fact that neighbors may have trespassed in the past) does not justify the imposition of any
5 SEPA requirements because the neighbors will lose that privilege as a result of the development.
6 Similarly, the fact that the applicant has chosen to retain the trees on its land in the past and through
7 that choice provided neighbors with an appealing arboreal view does not put the applicant in a
8 position where it must now continue to offer that type of view to neighboring properties. With one
9 exception the applicant proposes development that is aesthetically similar and compatible with
10 surrounding uses. For this reason, there is no legal basis for imposing any further environmental
11 review or mitigation to address aesthetic impacts. The one exception is retaining walls. The
applicant proposes numerous retaining walls that will reach heights of up to 21 feet. Retaining walls
of this height are not present in the vicinity and the aesthetic impacts of these structures are not
similar or compatible to the structures on neighboring properties. Consequently, the MDNS
mitigation measures will require ten foot wide perimeter landscaping designed to aesthetically buffer
these walls from neighboring uses.

12 TPWAG alleged more technical environmental impacts related to the geotechnical studies,
13 hazardous materials, drainage, wetlands impacts, groundwater impacts, landslide hazards, seismic
14 hazards, and retaining walls. The expert testimony and reports provided by the applicant, verified by
15 experts from the City staff and in some cases, third party peer review, proved to be more compelling
16 than the expert testimony provided by TPWAG, especially when factoring the substantial weight that
17 must be given the SEPA responsible official's determination that the proposal will not create any
18 probable significant adverse environmental impacts. One issue that did require some additional
19 mitigation was hazardous waste. An appellant expert testified that the prior ownership of the
20 property by the US Department of Defense raised a concern that the property may contain hazardous
21 waste. The applicant refused to grant access to the subject property for purposes of testing for
22 hazardous waste or any other site investigation. The applicant also acknowledged that it did a Phase
I hazardous waste environmental review when it purchased the property, but never offered the
review into evidence. Given the somewhat suspect conduct of the applicant, an MDNS condition of
review will require that the applicant submit its Phase I review to staff prior to development, to
verify that there is no hazardous waste issue with the site.

23 The applicant's SEPA appeal was more limited in scope and only challenged three of the City's
24 MDNS conditions, specifically Conditions 1, 3 and 6. At hearing the City and applicant agreed to
25 revised language for Conditions 1 and 3. Condition No. 6 remained the only contested issue in the
26 applicant's appeal. The condition required a 15-foot landscaping buffer around the entire perimeter
of the development. This decision only found a ten -foot buffer necessary, limited to areas adjoining
proposed retaining walls to conceal the walls from neighboring view.

A summary of testimony is attached as Attachment A. The summary is provided as a convenience and reference to those who would like an overview of the evidence presented at the two days of hearings on this application. The testimony section should not be construed as any formal findings of fact and also do not represent what was determined to be important to the final decision.

CONTENTS

I. SUMMARY	1
II. TESTIMONY	3
III. EXHIBITS	3
IV. FINDINGS OF FACT	4
V. CONCLUSIONS OF LAW	24
SEPA APPEAL.....	24
PRELIMINARY PLAT	30
VI. DECISION.....	39
VII. APPEAL RIGHTS AND VALUATION NOTICES.....	44

II. TESTIMONY

Please see Attachment A for testimony summary.

III. EXHIBITS

Please see Attachment B for the exhibits admitted during the hearing. Exhibits admitted after the hearing are as follows:

- Exhibit AS: City of Renton Preliminary Plat Condition Revision Response (December 11, 2014)
- Exhibit AT: TPWAG Post Hearing Closing Argument (December 14, 2014)
- Exhibit AU: TPWAG Motion – Late Filing (December 15, 2014)
- Exhibit AV: Henley Response to TPWAG Motion – Late Filing (December 15, 2015)
- Exhibit AW: Henley (Proposed) Order Denying TPWAG Motion – Late Filing (December 15, 2014)
- Exhibit AX: Hearing Examiner Ruling – Late Filing (December 15, 2014)
- Exhibit AY: Henley Response – TPWAG Post Hearing Closing Argument (December 19, 2014)
- Exhibit AZ: Henley Reply – City of Renton Preliminary Plat Condition Revision Response (December 19, 2014)
- Exhibit BB: City of Renton – TPWAG Post Hearing Closing Argument (December 22, 2014)

IV. FINDINGS OF FACT

Procedural:

1. Applicant. Henley USA, LLC.

2. Hearing. A consolidated hearing on the preliminary plat application and SEPA appeals was held on November 18, 2014 and continued to December 8, 2014 in the City of Renton Council City Chambers. The record was left open for the appellants to provide a SEPA Closing Argument by December 12, 2014. City staff was also given until December 12, 2014 to provide a SEPA Rebuttal. City staff and the applicant had until December 19, 2014 to provide SEPA closing arguments and preliminary plat comments.

Substantive:

3. Project Description and Appeal.

A. Project Description. The applicant requests preliminary plat approval for the subdivision of 21.66 acres into 97 single-family residential lots. There is an alternate plat with 96 lots to allow for 30% tree retention. The property is located at the dead end of SE 18th Street. It is bordered on the south by the Cedar River Pipeline and on the east by the Mercer Island Pipeline. Two appeals of a mitigated determination of nonsignificance ("MDNS") issued under the Washington State Environmental Policy Act ("SEPA") were consolidated with the review of the preliminary plat.

The subject property consists of four parcels. The majority of the site is located in the R-8 zone. A small portion is located in the R-4 zone. All proposed lots are located in the R-8 zone. The proposed lots would range in size from 4,500sf to 8,456sf. The average lot size is 5,399sf. Under either the 96 lot or 97 lot scenarios, density would be equal to or less than 5.70 dwelling units per acre. In addition to the residential lots, 13 tracts are proposed for sensitive areas, tree retention, storm drainage, access, pedestrian connections, and open space including an existing 10 foot wide vegetated buffer along the northern boundary. Access to the site would be gained from SE 18th Street with secondary access extended from 124th Place SE.

The site is currently vacant with 1,305 significant trees. The applicant has proposed to retain or mitigate 188 trees in order to achieve the objective of 30% tree retention requirement. Adequate tree retention requires approval of the 96-lot alternative. The site slopes generally to the west/northwest at an approximate average slope of 10-15% with localized slopes of 25%. The site contains three Category 2 wetlands (Wetlands A, C, and, D) and two Category 3 wetlands (Wetlands B and E). The applicant is requesting a Critical Area Exemption for the extension of SE 18th Street through portions of the buffer associated with Wetland E.

1 The applicant has submitted a Wetland Report, Drainage Report, Traffic Impact Analysis,
2 Geotechnical Engineering study, Arborist Report, and Habitat Data Report. Independent secondary
3 studies for Transportation and Wetlands are included with the application.

4 B. SEPA Appeal. A mitigated determination of nonsignificance (“MDNS”) was issued for the
5 proposal on September, 2014. Two timely appeals of the threshold determination were filed by the
6 Tiffany Park Woods Advocacy Group (TPWAG) and Cairncross & Hempelmann on behalf of
7 Henley USA, LLC.

8 1. Applicant SEPA Appeal. The applicant challenged three of the City’s MDNS
9 conditions, specifically Conditions 1, 3 and 6 on the grounds that they impose unlawful
10 obligations on the applicant and restrict the applicant’s ability to develop the plat.

11 a. MDNS Condition 1. The applicant argued MDNS Condition 1 should be
12 revised because the condition required earthwork to comply with an earlier, preliminary
13 version of the geotechnical report which has since been superseded. The applicant requested
14 the SEPA condition be revised to state the earthwork shall be consistent with the final
15 geotechnical report submitted prior to construction (Exhibit J). City staff and the applicant
16 then agreed upon the following language for Condition No. 1, which is found to adequately
17 address pertinent environmental impacts:

18 *All earthwork performed, implemented by the applicant, shall be consistent with the*
19 *recommendations of the geotechnical report, prepared by Associated Earth Sciences,*
20 *Inc., dated September 28, 2012 or consistent with the recommendations of the final*
21 *City-approved geotechnical report.*

22 b. MDNS Condition 3. The applicant’s concerns over MDNS Condition No. 3
23 became moot since the filing of its appeal and the City and applicant have been able to agree
24 upon a revised condition that acceptably mitigates against environmental impacts.

25 MDNS Condition 3 provides as follows,

26 *The applicant shall be required to retain 30% of the significant trees on site with*
exclusions for those trees that are considered dead, diseased, or dangerous, trees
located within proposed rights-of-way, and trees located within the critical areas
and their associated buffers.

The applicant initially argued the condition should either be struck as a SEPA condition or
modified to require compliance with the Tree Cutting and Land Clearing Plan, completed by
Washington Forestry Consultants, Inc. (August 27, 2014) which complies with the 30%
retention requirement (Appeal Exhibit A, Attachment 11).

1 City staff disagreed. They argued that there are probable adverse environmental impacts that
2 are being mitigated by the MDNS condition. The City argued the MDNS Condition prevents
3 the applicant from using mitigation under RMC 4-4-130(H)(1)(e)(i) to replace trees and
instead requires retention of significant trees.

4 The Tree Cutting and Land Clearing Plan, completed by Washington Forestry Consultants,
5 Inc. (August 27, 2014) established that overall the proposal will actually meet the City's
6 SEPA 30% tree retention requirement. To meet this requirement, the applicant must retain or
7 mitigate 188 on-site trees. The Washington Forestry Consultants plan proposes to save 181 of
8 these trees and mitigate the final seven trees. The applicant's tree retention plan analyzed just
9 the 96 lot alternative. However, Mr. Galen Wright of Washington Forestry Consultants stated
10 new field studies performed since the August 27, 2014 report have identified additional
11 significant trees on-site beyond those mapped in the original field survey. These trees will be
retained, bringing the total retention to well above the 188 required trees. Mr. Wright stated
he was much more confident now regarding the location of trees, their health and which
might be viably preserved.

12 Since the applicant ultimately achieved the 30% retention objective, the City and applicant
13 agreed to the following tree retention language as a condition of approval,

14
15 *The applicant shall provide a final Tree Retention Plan, complying with the 30% tree*
16 *retention mitigation measure while demonstrating proposed walls would not impact*
17 *trees proposed for retention. The Final Tree Retention Plan shall be submitted to, and*
18 *approved by, the Current Planning Project Manager prior to construction permit*
19 *approval.*

20 c. MDNS Condition 6. MDNS Condition No. 6 remains the only contested
21 portion of the applicant's appeal. MDNS Condition No. 6 as adopted by the SEPA
22 responsible official required a 15-foot landscape buffer around the entire perimeter of the
development. For the reasons identified in FOF No. 5, this perimeter has been reduced to ten
feet and must only be placed in areas to conceal proposed retaining walls from neighboring
view.

23 2. TPWAG SEPA Appeal. TPWAG raised several issues in its SEPA appeal, alleging
24 both inadequate review and probable significant adverse environmental impacts. The
25 impacts identified by TPWAG are addressed in FOF No. 5.
26

1 4. Surrounding Area. The subject site is surrounding on all sides by single family residential
2 development. To the south it is bordered by the 100 foot wide Cedar River Pipeline. To the east, it is
3 bordered by the 60 foot wide Mercer Island Pipeline. The zoning surrounding the subject on all sides
is single family residential (R-8), though there is also a small portion of R-4 zoning to the east.

4 5. Adverse Impacts. The proposal does not create any probable significant adverse
5 environmental impacts. Adequate public facilities and drainage control are provided as determined
6 in Finding of Fact No. 6. As noted in Finding of Fact No. 5, two appeals to the threshold were filed.
7 The issues on appeal from the applicant, Henley, are discussed first. The issues on appeal for the
project opponent, the Tiffany Park Woods Advocacy Group, are then discussed. Finally, other
8 impacts not related to either appeal but related to the preliminary plat are discussed below.

9 A. Applicant SEPA Issue. As identified in FOF No. 3, only one issue remains in the
10 Applicant's SEPA appeal, specifically the need for perimeter landscaping. It is
11 determined that only the applicant's proposed retaining walls create probable
12 significant environmental impacts and that these impacts can be reduced to
nonsignificant levels with ten foot sight obscuring landscaping limited to perimeter
areas in front of the retaining walls.

13 1. Proposed Development Aesthetically Compatible with Surrounding
14 Development. With the exception of retaining walls (addressed separately),
15 the proposed development does not create any probable significant impacts
16 because of aesthetic incompatibility with the surrounding neighborhood. A
17 site visit and aerial photographs (Ex. K.6.c) reveal that the surrounding
18 neighborhoods are not exceptionally wooded or treed and that the amount of
19 trees proposed for retention by the applicant would not be less than
20 surrounding development. Further, although the applicant proposes a modest
21 increase in density, reasonable minds would certainly differ as to whether this
22 difference in density would create a significant aesthetic impact. The
23 developed portions of the plat are all in the R-8 zone, though the proposed
24 residential density will be 5.7 dwelling units per acre. The minimum density
25 requirement in the zone is 4.0 dwelling units per acre. All adjacent properties
26 are zoned R-8. Proposed lot sizes would range from 4,500 square feet to 8,456
square feet with an average lot size of 5,399 square feet. While the proposed
lots appear to be, on average, somewhat smaller than those of the surrounding
developments, they are not significantly smaller and are at a density that is
lower than would otherwise be allowed within this zone. Further, because of
the presence of the two pipelines and the perimeter location of the critical
areas tracts, very few of the lots will be directly adjacent to existing residential

lots. The pipelines do not offer much in terms of vegetated screening but they do physically separate the proposed lots from existing lots. Any difference in the size of the lots will not be aesthetically significant, especially given the separation of the project from the surrounding neighborhood.

2. Loss of Trees Not a Probable Significant Environmental Impact. It is determined that the loss of trees beyond those required to be retained by City code does not qualify as a probable significant adverse environmental impact. In its environmental review, the City suggests that the perimeter is necessary to make up for the fact that a significant number of trees will be removed, thereby adversely affecting the views currently enjoyed by neighboring properties. Numerous adjoining property owners also commented on this impact. It is determined that the loss of trees owned by the applicant does not qualify as a significant adverse environmental impact. Of course, almost all development of vacant parcels involves the removal of trees. As discussed in COL No 5, in order to justify mitigation beyond the minimum standards set by the City's landscaping code, the project must involve some fairly unique or significant impacts that were not anticipated in the adoption of that code. The existence of such a large parcel (and large number of associated trees) is arguably unique, but that argument is undermined to a large degree by the subjectivity involved in aesthetic review. Given that the applicant is retaining 30% of the trees, it is debatable whether the loss of the other 70% creates a significant aesthetic view impact to neighboring property owners, especially with the buffering that will be required by this decision to obscure retaining walls.

The assessment of aesthetic impacts occasioned by the loss of trees is also tempered by the fact that it is debatable from a legal standpoint whether the applicant can be made to mitigate against the loss of a voluntary aesthetic benefit it has provided to the surrounding community. The applicant has had no obligation to retain all of the trees on its property in the past. Surrounding property owners have no entitlement to this currently existing aesthetic benefit. SEPA only requires mitigation and analysis of impacts created by development. The loss of trees in excess of those required by City code is not an impact created by the development, since those trees could have been removed at any time prior to development. The site visit, the record and the code do not reveal that any other properties in the vicinity have had to retain perimeter landscaping or that they provide a similar aesthetic benefit to the surrounding community. Given that no such need was found in the past when

1 trees were removed by other development it is at least somewhat questionable
2 why that is found necessary now in the absence of any code provision
3 expressly requiring such a perimeter.

- 4 3. Retaining Walls Create A Probable Significant Adverse Environmental
5 Impact. It is determined that the retaining walls proposed by the applicant in
6 excess of four feet create a probable significant adverse environmental impact.
7 As noted in the Staff Report, the applicant is proposing multiple walls on the
8 proposed project. Some of the walls will be rockeries. Some walls are
9 retaining walls which will face into the site. These are walls that allow for a
10 finished grade for a lot to be below the surrounding grade. Other walls will be
11 lock and load walls that allow for a finished lot grade above the surrounding
12 grade. Six foot fencing is allowed on top of both types of walls. These walls
13 are visible from outside the site. Staff notes the applicant has proposed lock
14 and load walls ranging in height from four feet potentially up to 21 feet high.
15 During testimony, Mr. Talkington stated revised grading plans may allow for
16 reduced retaining wall heights.

17 A site visit to the surrounding neighborhoods was conducted December 28,
18 2014. Though the subject is largely surrounded by pipeline easements, these
19 easements are cleared of vegetation allowing a direct line of sight into the
20 development and of the retaining walls. The site visit demonstrated that high
21 retaining walls are not a common feature of the surrounding development. The
22 applicant proposes solid rock or concrete walls of up to 21 feet in height.
23 These walls will impact the view of the property from surrounding residences,
24 especially given they are an uncommon feature in the area. As proposed, the
25 view from surrounding residences will be significantly impacted as they
26 change from forest canopy and surrounding homes to rock wall faces of nearly
two stories tall in places. The Staff Report notes several walls will be seen by
the public (proposed Lots 40, 41, 46, 47, 80, 82, 83-90, 93 and 94).

When considering retaining wall impacts, the height of the wall affects the
significance of the impacts. Low retaining walls do not block sunlight and air
or obstruct views. The building codes only require building permits for
retaining walls four feet or more in height (RMC 4-5-060(E)(2)(c)(iv)). This
serves as a good threshold height for aesthetic impacts. Retaining walls lower
than four feet do not obstruct views for a person of average height. They also
tend to be more commonly found in neighborhoods since no building permit is
required. For these reasons, the findings in the preceding paragraph on

1 retaining wall aesthetic impacts are limited to retaining walls over four feet or
2 more in height. Retaining walls less than four feet in height are not found to
3 create probable significant adverse environmental impacts.

- 4 4. Ten Foot Perimeter Landscaping Fully Mitigates Retaining Wall Impacts.
5 The aesthetic impacts of the retaining walls can be fully mitigated by the by a
6 ten foot perimeter landscaping strip. The City is recommending a fifteen foot
7 buffer of trees. During testimony, the applicant's arborist stated a ten foot
8 wide buffer with a staggered double row of conifers would create a very dense
9 screen in 10 years. He noted a 15 foot buffer is not sufficient in width to plant
10 a third row of conifers, which would require a 30 foot buffer. The City's
11 arborist concluded that at least 35 feet was necessary to provide for a site-
12 obscuring buffer of trees and that ten verses fifteen feet would not make any
13 material difference in screening (Decision Attachment A, page 7). Given that
14 staff's 15 foot recommendation is counter to the recommendation of its own
15 arborist¹ and that the applicant's arborist provides a reasonably good
16 explanation of how a ten foot buffer can effectively screen the property, it is
17 determined that the ten foot buffering advocated by the applicant's arborist
18 will provide a fully sight obscuring buffer to the retaining walls and as such
19 will prevent the retaining walls from creating probable significant adverse
20 environmental impacts.

21 Limiting the landscape perimeters to the areas where the retaining walls are
22 four feet or more in height should also completely obstruct them from the
23

24 ¹ 1 Staff also advocated for a 15 foot buffer because it would help retain some of the treed character of the project
25 site. See Exhibit A1, page 19. As outlined in FOF No.5.A.1, the applicant cannot be legally made to compensate for
26 the loss of trees on its property. Further, staff also based its 15 foot buffer requirement upon RMC 4-4-070(F)(4)(b).
This perimeter buffer provides for aesthetic screening between single and multi-family housing. This standard does
serve as a good analogous standard for retaining wall impacts. Unfortunately, the standard only requires six foot
high vegetation. A six foot high hedge set against a 21 foot high retaining wall does not accomplish a great deal of
aesthetic mitigation. For this reason, the RMC 4-4-070(F)(4)(b) buffer does not serve as an ideal analogous
landscaping standard. What the RMC 4-4-070(F)(4)(b) and other RMC 4-4-070 perimeter buffer requirements does
show is that the City Council was uncomfortable requiring more than a fifteen foot wide buffer in any situation.
Requiring more than 15 feet does in fact to place an unreasonable burden upon the applicant for something as
subjective as an aesthetic impact. It is for this reason likely that the City went against the findings of its arborist and
only required a fifteen foot buffer instead of a 30 foot buffer. This was an appropriate approach, but did not go far
enough since as testified by the applicant's arborist, a fifteen foot would not provide for any significant protection
beyond a ten foot buffer. Given that a 30 foot buffer would be unreasonable mitigation, the imposition of a ten foot
buffer has to be found acceptable even though there a small chance it may not provide for 100% screening as
concluded by the City's arborist.

1 view of neighboring property owners. For these reasons, the conditions of
2 approval will require the applicant to revise its landscaping plan to provide for
3 site obscuring perimeter landscaping adjacent to areas where the retaining
4 walls are four or more feet in height, specifically in the perimeter areas close
to Lots 40, 41, 46, 47, 80, 82, 83-90, 93 and 94.

5 B. TPWAG SEPA Issues.

6 1. Aesthetic Impact Due to Loss of Trees. The appellants argue there is a
7 significant adverse aesthetic impact due to the loss of trees. With the
8 exception of retaining walls (addressed separately), the proposed development
9 does not create any probable significant impacts because of aesthetic
10 incompatibility with the surrounding neighborhood. As discussed above in
11 Finding of Fact 5.A.1, the surrounding neighborhoods are not exceptionally
12 wooded or treed and the amount of trees proposed for retention by the
13 applicant would not be less than surrounding development. As described in
14 Finding of Fact 5.A.2, the is retaining 30% of the trees. The applicant has had
15 no obligation to retain all of the trees on its property in the past. Surrounding
16 property owners have no entitlement to this currently existing aesthetic
17 benefit. The loss of trees in excess of those required by City code is not an
impact created by the development, since those trees could have been
removed at any time prior to development. It is also at best debatable whether
the loss of the other 70% creates a significant aesthetic view impact to
neighboring property owners, especially with the buffering that will be
required by this decision to obscure retaining walls.

18 2. Potential Presence of Hazardous Materials. No impacts from hazardous
19 materials are anticipated. The appellants demonstrated the subject property
20 had at one time been owned by the Department of Defense. They alleged there
21 might be hazardous materials on site based on this former user. For the past 65
22 years, for all intents and purposes, the site has been covered by a seemingly
23 healthy forest canopy. The appellants were unable to demonstrate evidence of
24 any overt signs of contamination visible on the site that might justify
25 overturning the substantial weight due the SEPA official's determination that
26 the project site does not contain any hazardous waste necessitating further
environmental review. However, nor were the appellants granted access to
perform their own studies. The applicant also neglected to submit a Phase 1
Environmental Site Assessment it said was prepared for the proposal, even
after the appellants made the study an issue during the hearing. The actions of

1 the applicant on the hazardous waste issue create uncertainty as to whether the
2 project site is free from hazardous waste. Given that this issue remains
3 unresolved, a condition of approval will require the applicant to submit the
4 results of the Phase 1 ESA to City staff for confirmation that there are no
hazardous materials on site.

- 5 3. Wildlife Habitat and Connectivity. No probable significant adverse impacts to
6 wildlife habitat are anticipated and the SEPA Responsible Official had
7 sufficient information to adequately assess the impacts. The applicant
8 submitted a Revised Wetland Determination and Response Letter (Exhibit 5),
9 a Habitat Assessment (Exhibit 6), and two Habitat Assessment Technical
10 Memorandums (Exhibits 16 and 17). The City required an independent
11 secondary review of the wetlands report (Exhibit 14). As noted in Conclusion
12 of Law 3.B below, the SEPA responsible official must make a prima facie
13 showing that he has based his determination upon information reasonably
14 sufficient to evaluate the impacts of a proposal (WAC 197-11-335). These
multiple studies and memoranda were more than adequate to fully assess the
wildlife impacts of the proposal as the appellants have not demonstrated any
additional information that could have made any material difference in the
official's conclusions.

15 No significant adverse impacts are anticipated for wildlife or habitat
16 connectivity. With the exception of pileated woodpeckers and Townsend's
17 bats, the fish and wildlife habitat assessment found no listed or endangered
18 species or priority habitat on site. Though the property may function as
19 marginal habitat for many common species, it is geographically isolated from
20 the Cedar River corridor by the Mercer Island Pipeline easement, a residential
21 street, residential lots, a steep slope and the Bonneville Power
22 Administration's easement. Testimony from all sides spoke to the heavy
23 human disturbance on the site including recreational walkers, bikers,
24 unleashed dogs, and the presence of unpermitted structures and pits including
forts and paint ball hides. The applicant's wildlife expert, Racheal Villa of
Soundview Consultants testified that the formalized protection of the wetlands
and buffers on site would result in an improvement in habitat conditions for
both pileated woodpeckers and Townsend's bats over the present situation due
to the fairly degraded condition of the habitat at present.

- 25 4. Seismic Hazards. The SEPA Responsible Official had adequate information to
26 assess the seismic hazards and no probable significant adverse impacts are

1 anticipated in regards to these hazards. As to adequacy of review, the
2 applicant provided a geotechnical report by AES (Exhibit 7) that was
3 reviewed, by the request of the applicant, by Earth Solutions, NW (Exhibit
4 K.2). The AES conclusion in the geotechnical report stated the site, from a
5 geotechnical engineering standpoint, is suitable for support of conventional
6 paving, lightly loaded structures and typical buried utilities, all typical
7 improvements in a single family residential subdivision. The AES preliminary
8 geotechnical report and subsequent peer review by Earth Solutions, NW
9 provide information reasonably sufficient to evaluate the environmental
10 impacts of the proposal under WAC 197-11-335.

11 The appellants note the nearest USGS mapped fault zone is 3.9 miles away,
12 though they feel additional testing should occur to determine if there are
13 unmapped fault zones. The appellants argued there was evidence of ground
14 movement in the form of bent trees and hummocky land which could indicate
15 several things including seismic shifting or landslide activity caused by a
16 shallow groundwater table. The City has mapped the site as a Low Seismic
17 Hazard area and outside of the Coal Mine Hazard areas. The applicant has
18 provided a geotechnical report by AES that was reviewed at the applicant's
19 request by Earth Solutions, NW, the firm hired to perform geotechnical work
20 for the applicant going forward. Mr. Coglas of Earth Solutions, NW testified
21 there are no seismic hazards on the property (Decision Attachment A, Page
22 21). Mr. Coglas went on to state with respect to site stability and groundwater,
23 the stability of the predominantly flat to gently sloping property is good. In his
24 opinion and based on geologic mapping and subsurface data for the site and
25 surrounding area, the site is very similar to the surrounding developed
26 residential area. There is nothing in the record to indicate an increased danger
of seismic hazard beyond that of the surrounding properties. A single-family
residential plat in this area is in no more probable seismic danger than the
surrounding developed properties. The proposal will not create any probable
significant adverse environmental impacts in regards to seismic hazards.

5. Landslide Hazards. The SEPA Responsible Official had adequate information
to assess landslide hazards. They appellants argued the soil under the plat has
structural anomalies that require further study to determine if there are
landslide or other geologically hazardous conditions. The appellants point to
bent trees and uneven surfaces located on the site may indicate shallow or
slightly deeper ground movement which may be indications of landslide
activity in the past or future propensity of slides. They note they requested

1 access to perform their own studies but were denied. Specifically, the
2 appellants have requested expanded soils tests, percolation tests and more test
3 pits and borings to measure localized hydraulic conductivity. As noted above,
4 the applicant has provided a geotechnical report by AES that was reviewed by
5 Earth Solutions, NW. Mr. Coglas of Earth Solutions, NW testified there are no
6 landslide hazards on the property (Decision Attachment A, Page 20). The
7 City's Development Engineering Manager, Mr. Lee, testified he concurred
8 with Mr. Coglas' assessment of the landslide hazard risk. Mr. Lee is a
9 professional engineer with extensive experience in site development and civil
10 engineering in Washington. He noted, the steep areas are very small (15-20'
11 feet long) and do not warrant slope stability analysis. Overall on the project
12 site, the approximate slope is only 10% or so. There are no sensitive or
13 protected slopes on the subject property. The majority of the subject site has
14 less than 15 percent slopes. There are a few areas with slopes of 15 percent to
15 35 percent. These areas are characterized as Medium Landslide Hazard areas.
16 Mr. Lee stated the City code does not require additional slope stability
17 analysis for these areas.

18 The appellant also asserted that the number and location of test pits were
19 insufficient to evaluate slope stability. Mr. Lee testified there were sufficient
20 numbers of test pits to gauge impacts on ground movement from groundwater
21 on site. He would have preferred to see a few more, especially in the vault
22 area. However, as Mr. Coglas testified, the City may require extra analysis
23 during final engineering as the design is finalized. He stated he does not
24 typically require additional geotechnical analysis at this stage of the process.
25 Mr. Lee felt the information provided was adequate to allow for a
26 determination of impact on the site (See Decision Attachment A, Page 24).

Mr. Lee's objectivity as a staff employee and his engineering expertise are
determinative on the slope stability issue. He clearly reviewed the geotech
reports in detail and found no need for further investigation or additional
information. The findings of the geotechnical analysis are also compelling on
their own and the relatively modest slopes of the project site do not raise any
apparent cause for concern. For these reasons, it is concluded that the SEPA
responsible official had reasonably adequate information to assess the slope
stability of the project site.

6. Groundwater. The SEPA Responsible Official had reasonably adequate
information to assess the groundwater impacts and there are no probable

1 significant adverse groundwater impacts associated with the proposal. The
2 appellants argued there was insufficient study of the groundwater situation on
3 site and the potential affect groundwater might have on development. They
4 note they requested access to perform their own studies but were denied.
5 Specifically, they appellants have requested expanded soils tests, percolation
6 tests and more test pits and borings to measure localized hydraulic
7 conductivity. The applicant provided a geotechnical report (Exhibit 7), a peer
8 review of the geotechnical report (Exhibit K.2), a wetlands report and a
9 revised wetlands report (Exhibit 5), and a drainage report (Exhibit 8). The
10 wetlands reports were independently reviewed by Otak (Exhibits 14 and 15).
11 The City's Development Engineer, Mr. Lee stated the applicant had provided
a sufficient number of test pits to gauge impacts of potential groundwater on
site (Decision Attachment A, page 24). Given the extensive information
provided and the peer review, the applicant has provided information
sufficient for the SEPA Responsible Official to issue a threshold
determination with respect to groundwater impacts.

12 There are no anticipated adverse impacts related to the groundwater table. The
13 appellants argue groundwater saturation levels at this site make it
14 undevelopable. They point to the AES geotechnical report (Exhibit 7), the
15 Shultz wetlands report (Exhibit 5), the Technical Information Report by
16 Barghausen and the Otak wetlands reviews (Exhibits 14 and 15) as all
17 demonstrating the groundwater table is at or within seven inches of the surface
18 in all wetland areas. Groundwater near the surface is defining feature of
19 wetlands. However, the appellants argue the water table is a flat contour
throughout the project site and, as a consequence of a high water table, water
intrusion will disrupt or prevent proper installation of utilities, foundation
drains and the stormwater vault.

20 The applicant's geotechnical engineer, Ray Coglas, testified there is perched
21 groundwater on the site, rather than a flat table, a statement Mr. Lee concurred
22 with during testimony (Decision Attachment A, pages 22 and 25,
23 respectively). If the site had a flat water table close to the ground surface all
24 over the site; the whole site would be underwater because of the varying
25 topography, which is of course not the case. He stated perched waters trapped
26 by impervious soils are limited in area and capacity and will drain away when
cuts are made to hillsides. The water AES encountered was seepage from
perched water rather than the actual groundwater table (Decision Attachment
A, page 22). Mr. Coglas referred to the AES test pits and stated they showed

1 no caving or seepage which would indicate weakness in the soils or significant
2 groundwater at or near the surface outside of wetland areas. He stated though
3 there will be some groundwater seepage, he does not expect the site will
4 require dewatering or extensive pumping. AES found no groundwater in its
5 test pits. Mr. Coglas stated even if the appellants are correct and that
6 groundwater is at zero elevation, it could be managed without damaging the
7 feasibility of the project. Mr. Lee also concurred with this statement.

8 Mr. Coglas noted the soils at the subject are not unique to this subject. The
9 entire subject is surrounded by existing development at a similar intensity to
10 the proposed development on similar topography and soils. There is no
11 indication from the record or from the site visit to suggest the utilities;
12 infrastructure or house foundations in the surrounding neighborhoods have
13 failed due to perched groundwater or a high water table. Mr. Coglas noted the
14 presence of groundwater will not preclude development if best management
15 practices are followed.

16 Given Mr. Lee's concurrence in the opinion of Mr. Coglas and the substantial
17 weight required of the findings of the SEPA responsible official, it is
18 determined that the proposal will not create any probable significant adverse
19 groundwater impacts.

- 20 7. Downstream Impacts. The SEPA Responsible Official has information
21 reasonably sufficient to evaluate the downstream impacts of the proposal. The
22 City required a Level 1 downstream analysis. The proposed Level 2 Flow
23 Control (Exhibit A, page 31) will restrict the flow of the 2-year release rate to
24 50% of the pre-developed site conditions, which will help to reduce an
25 existing drainage issue. Mr. Lee stated the City is uncertain of a segment of
26 the pipeline that takes the water downstream of the project site and have
therefore requested a Level 2 downstream analysis to be performed prior to
building permit approval. They want to make sure the project will not
exacerbate existing downstream flooding issues. An NPDES permit will be
required for the project, which will stipulate the allowable discharge into the
conveyance system (Decision Attachment A, Page 25). The City additionally
established a SEPA mitigating condition requiring Level 2 downstream
analysis for ¼ mile from the project site. All of the requirements must be met
before a building permit or construction permits are issued. With these
conditions in place, the City has reasonably sufficient information at this stage
of review to evaluate down stream impacts.

1 8. Discharge into Wetlands. The proposed discharge of roof run-off into
2 wetlands will not create a probable significant adverse environmental impact.
3 The detailed local, state and federal standards applicable to stormwater run-off
4 are determinative on the existence of adverse impacts. If the proposed
5 drainage is compliant with applicable regulations, there are no adverse
6 impacts. The appellants assert that the proposed roof run-off into wetlands is
7 in violation of the Clean Water Act. As noted by the applicant, the King
8 County Surface Water Drainage Manual specifically excludes drainage from
9 roofs (except untreated metal roofs) from consideration as pollution
10 generating sources (Exhibit AF). The appellants have not provided any
11 citation or court opinion that roof run off discharge constitutes a violation of
12 any applicable regulation and no such violation is apparent from the reading
13 of the Clean Water Act. Mr. Talkington, in his testimony for the applicant,
14 noted that discharge of clean or non-point source polluted stormwater into
15 wetlands is common practice and is required to hydraulically charge the
16 wetlands. Mr. Lee stated the applicant had complied with all city, state and
17 federal code requirements with respect to stormwater. Mr. Lee testified the
18 codes are sufficient to address all probable stormwater impacts. He further
19 noted a National Pollution Discharge and Elimination System permit will be
20 required for the project, which will ensure that no stormwater pollutants are
21 released into wetlands or groundwater. The permit will include background
22 and discharge monitoring. No building permit or construction permits will be
23 issued until the NPDES conditions are met. Since the proposed stormwater
24 discharge is consistent with all applicable regulations, is a standard practice
25 for development and also meets the approval of staff, it is determined that the
26 proposed discharge to wetlands will not create any probable significant
 adverse environmental impacts.

9. Air Quality. No significant adverse impacts to air quality are anticipated.
During the construction phase of the project, there will be exhaust from trucks
and heavy equipment. However, after the construction phase is over, the
subdivision will function similarly to the surrounding development with
respect to emissions and air quality issues. The proposed development is
functionally the same as the existing development pattern. Nothing in the
record indicates there will be significant adverse impacts with respect to air
quality.

C. Other Impacts Related to the Preliminary Plat.

- 1 1. Wetlands. As proposed and conditioned, the proposal will not create any
2 significant adverse impacts to wetlands. There are five wetlands on site. Three
3 of the wetlands are Category 2; the others are Category III. The applicant
4 submitted a Wetland Determination, prepared by C. Gary Schulz, Inc.
5 (October 30, 2013) and a revised Wetland Determination in response to
6 revisions to the plat including the use of a drainage vault, instead of a drainage
 detention pond, and the inclusion of a vegetated buffer along portions of the
 site perimeter (February 28, 2014).

7 Based on public comments (See Exhibit 10.6), staff required an evaluation by
8 an independent qualified professional regarding the applicant's wetland
9 analysis and the effectiveness of any proposed mitigating measures. On April
10 3, 2014 an independent secondary wetland review was provided to the City by
11 Otak (Exhibit A, Attachment 14). Following the completion of
12 recommendations in the Otak memo, the applicant submitted a Revised
 Wetland Determination and Response (June 3, 2014) (Exhibit A, Attachment
 5).

13 At the hearing, members of the public expressed concern regarding the
14 protection of wetlands and wildlife habitat. There was specific concern
15 regarding removal of trees and wetland hydrology. During testimony, Ms.
16 Villa of Soundview Consultants stated she was hired by the applicant to
17 perform supplementary wetland review for fish and wildlife habitat. In her
18 study, she found no state or federally listed or protected species on the site.
19 She noted the habitat is fairly disturbed now with evidence of a lot of human
 intrusion. In her opinion, protection of the wetlands and habitats with proper
 fencing and signage would result in better protection for the habitat than exists
 currently.

20 The Otak Supplemental Independent Secondary Review concluded water
21 quality, wetland hydrologic function and flood storage will be protected. The
22 applicant proposes buffer averaging provisions (RMC 4-3-050(M)(6)(f)). The
23 buffer averaging plan provides additional buffer area at ratios that range from
24 1.6:1.0 to 9.5:1.0. Wetlands A, B, C, and D would have buffer areas
25 significantly greater following the buffer averaging proposal. However, staff
26 are concerned the proposed adjustments will not provide adequate buffering
 on the north and east sides of Wetlands B and C to take into account the
 proposed "lock & load walls" in those locations. The applicant will be

1 required to submit a Final Mitigation Plan (RMC 4-8-120(W)) demonstrating
2 appropriate mitigation for all wetlands and buffer impacts prior to permit
3 approval.

4 The applicant has requested a critical areas exemption allowing a permanent
5 buffer impact to 14sf of the Wetland E buffer. The exemption would allow the
6 applicant to construct the required full street improvements at SE 18th Street
7 (RMC 4-6-060). This area (219sf) has already been impacted by past
8 infrastructure construction. Staff recommends approval of the critical areas
9 exemption with mitigation for the impact.

10 The critical areas on site have a total area of 118,494 square feet (2.72 acres)
11 and would be located in (Tracts B, G, K, & M). The applicant is proposing to
12 increase wetland buffers which would result in a total native open space used
13 to preserve native forest habitat of approximately 175,199 square feet (4.02
14 acres). As conditioned, no impacts to wetland habitat are anticipated.

15 Given the extensive review of wetland impacts, staff's review and
16 approval of wetland mitigation, and the applicant's compliance with all
17 applicable wetland regulations, it is concluded that the proposal will not
18 create any adverse impacts to wetlands.

- 19 2. Tree Retention Required. 2. Tree Retention Required. The proposal provides
20 for adequate tree retention because it complies with the City's tree retention
21 standards, RMC 4-4-130(C). The applicant submitted two versions of the
22 preliminary plat application. The first version is a 97 lot alternative that does
23 not achieve 30% significant tree retention. The second plat alternative is a 96-
24 lot preliminary plat that achieves 30% significant tree retention and
25 implements the applicant's Tree Protection Report. Since the 96-lot alternative
26 implements the applicant's tree retention plan and is consistent with the
agreed upon SEPA mitigation measure requiring 30% retention, this is taken
as the applicant's proposal and is the design approved by this decision. If the
applicant was still intending to pursue a 97-lot design, it should request
reconsideration.

No other significant impacts are reasonably anticipated from the evidence contained within the
administrative record.

6. Adequacy of Infrastructure/Public Services. The project will be served by adequate
infrastructure and public services. Preliminary adequacy of all infrastructure facilities has been

1 reviewed by the City's Public Works Department and found to be sufficient. Specific
2 infrastructure/services are addressed as follows:

- 3 A. Water and Sewer Service. This site is located in the City of Renton water service
4 boundary. There is an existing 8-inch water main stubbed to the site in SE 20th Court, in
5 SE 19th Court and SE 18th Court. This site is located in the 590-water pressure zone.
6 Static pressure in the area ranges from 65-82 psi. The site is located in the City of Renton
7 sewer service area. There is an 8-inch sewer main in SE 18th Street.
- 8 B. Police and Fire Protection. Police and Fire Prevention staffs indicate that sufficient
9 resources exist to furnish services to the proposed development; subject to the provision
10 of Code required improvements and fees. A Fire Impact Fee, based on new single family
11 lots, will be required in order to mitigate the proposal's potential impacts to City
12 emergency services. The fee is payable to the City as specified by the Renton Municipal
13 Code. Currently the fee is assessed at \$479.28 per single family residence. This fee is
14 paid at time of building permit issuance.
- 15 C. Drainage. As conditioned, the proposal provides for adequate drainage facilities. In order
16 to address concerns raised by staff, as recommended by them a condition of approval
17 requires a Level 2 downstream analysis for ¼ mile from the project site to determine if
18 the proposed project would exacerbate existing downstream capacity issues. The
19 applicant submitted a Preliminary Drainage Report prepared by Barghausen, dated
20 February 24, 2014 (Exhibit 8). Staff has determined that the preliminary plan is
21 consistent with the 2009 King County Surface Water Manual and City of Renton
22 Amendments to the KCSWM, Chapters 1 and 2. Full compliance with the Manual will
23 be required during engineering review.
- 24 D. Parks/Open Space. The proposal is consistent with adopted parks and open space
25 standards and, therefore, provides for adequate parks and open space. RMC 4-2-115,
26 which governs open space requirements for residential development, does not have any
specific requirements for open space for residential development in the R-8 district.
However, the applicant is proposing a total of 1.26 acres of passive and active open
space, in addition to critical areas on site, for the open space needs of the subdivision.
The applicant will also be require to pay park impact fees prior to building permit issuance
to ensure that the development pays its fair share of system wide park improvements.

1 E. Streets. The proposal, as conditioned, provides for adequate streets and associated
2 infrastructure. The applicant is proposing two points of ingress and egress into the plat;
3 SE 18th St and 124th Place SE. The primary neighborhood streets which would serve
4 project traffic include 116th Avenue SE, 126th Avenue SE, SE 168th Street, SE Petrovitsky
5 Road, S. Puget Drive, and 108th Avenue SE-Benson Road S. The project site is currently
6 served by King County Metro Route 148 with Routes 102 and 155 also operating within
7 the vicinity of the subject site. The nearest transit stop for Route 148 is located on Lake
8 Youngs Drive SE and 123rd Avenue SE.

9 Staff received comments from interested parties with respect to traffic specifically related
10 to the need for additional analysis, trip generation, lack of public transit, level of service,
11 sight distance, the Edmonds Avenue SE/SE 16th Street-Edmonds Way SE intersection,
12 the use of speed bumps for traffic calming, stop signs, and traffic impact fees (*See*
13 Exhibit 10).

14 The applicant submitted a Traffic Impact Analysis (TIA) prepared by TranspoGroup,
15 (November, 2013) as part of the original submittal. Based on public comments received,
16 staff required an evaluation by an independent qualified professional regarding the
17 applicant's transportation analysis and the effectiveness of any proposed mitigating
18 measures. The TIA concludes that all affected intersections will continue to operate at an
19 acceptable level of service, except the intersection of Benson Drive S/S Puget Drive,
20 which will fall to LOS E by 2018 with or without the proposed project. The addition of
21 AM peak hour project traffic would add approximately five seconds of average delay to
22 this intersection. Staff concluded that this minor amount of delay did not justify
23 additional mitigation and the reduction in LOS will not violate the City's adopted level of
24 service. The applicant will be required to pay traffic impact fees prior to issuance of
25 building permits, which provides adequate mitigation against the modest traffic impacts
26 created by the proposal.

27 The TIR noted limited sight distance exists today for southbound motorists on Monroe
28 Avenue SE approaching SE 18th Street due to the roadway geometrics and existing
29 obstructions (fence and on-street vehicle parking). The site distance issue was remedied
30 by an MDNS condition that requires the applicant to install a stop sign.

31 Included in the Independent Secondary Review (Exhibit 13) was a recommendation for
32 sight distance analysis at the 124th Place SE and SE 158th Street intersection. The report
33 identifies this intersection as a possible sight distance concern. Given the provided TIA
34 does not include an analysis of the sight distance at this intersection, a SEPA mitigation

1 measure was issued requiring the applicant submit a revised TIA including an analysis of
2 the 124th Place SE and SE 158th Street intersection sight distance and recommend
3 appropriate mitigation if needed (Exhibit 22). Site distances at all other study
4 intersections were deemed adequate with the exception of Beacon Way SE at SE 16th
5 Street.

6 The vertical curve of SE 16th Street presents a visibility concern. A crest vertical curve
7 obstructs sight distance where SE 16th Street crosses Beacon Way SE especially if car
8 speeds exceed posted speed limit signage. There are existing signs (Steep Hill, Slippery
9 When Wet, Advisory 15MPH Speed) at SE 16th Street northeast of Beacon Way SE
10 which help to calm existing traffic at this intersection. Approximately 60% of the
11 project's trips are anticipated to utilize this intersection. Therefore, the ERC issued a
12 SEPA mitigation measure requiring the applicant to install an additional warning sign for
13 a CROSSROAD (W2-1 symbol) with a 15MPH advisory speed on the southwest
14 directional approach to Beacon Way SE, along the north side of SE 16th Street (east of
15 Beacon Way SE) (Exhibit 22). The ERC issued another SEPA mitigation condition at this
16 intersection to reduce cut thru traffic. The applicant is required to install directional
17 information signage (white letters on green background) at S. Puget Drive and 116th
18 Avenue SE facing west (Exhibit 22). The signs are required to read "TIFFANY PARK"
19 with a left arrow and "CASCADE" with a right arrow.

20 Several public comments requested the use of speed bumps as a traffic calming measure
21 along SE 16th Street to address sight distance (including vertical), cut through traffic, and
22 spin out concerns which would be aggravated by traffic generated by the proposal. The
23 City does not support the use of speed bumps on public streets. Speed bumps are not
24 desired due to noise, excessive speeds between installations (so drivers can make up
25 time), and result in a reduction in response time of public safety vehicles such as fire
26 engines and aid cars.

Several public comments requested internal pedestrian connectivity, connections to
neighboring developments/abutting pipelines, connectivity to Tiffany Park Elementary,
and the crossing at SE 16th St and Edmonds Way SE intersection (*See Exhibit 10.22*). No
frontage improvements are required on adjacent street frontage. The internal public
streets have been proposed with a right-of-way width of 53 feet which meets the City's
complete street requirements for residential access streets. Pavement width of 26 feet, 0.5
foot wide curbs, 8 foot wide landscaped planters (on both sides of the street), 5 foot wide
sidewalks (on both sides of the street), drainage improvements, and street lighting are

1 required. The applicant is proposing two pedestrian connections to neighboring
2 developments and an abutting pipeline via Tracts C and E.

3 City staff evaluated the intersection of Edmonds Avenue SE/SE 16th Street-Edmonds
4 Way SE with respect to pedestrian improvements in 1996, 2005 and again in 2007 and
5 determined that crosswalks were not warranted at this location. The additional
6 development traffic will not exceed the threshold to warrant installation of a crosswalk at
7 this location.

8 As noted in staff testimony above, the proposal will not exceed six dwelling units per
9 acre and therefore is not required to provide alley access.

10 Several public comments dealt with construction traffic (*See Exhibit 10.30*). The
11 developer will be required to comply with the Renton Municipal Code for haul hours,
12 construction hours, and noise levels. A final Traffic Control Plan complying with the
13 Renton Municipal Code will be required to be submitted and approved prior to
14 construction.

15 F. Parking. Sufficient area exists, on each lot, to accommodate required off street parking
16 for a minimum of two vehicles per dwelling unit as required by City code.

17 G. Schools. The Renton School District anticipates it can accommodate any additional
18 students generated by this proposal at the following schools: Tiffany Park Elementary
19 (0.4 miles from the subject site), Nelson Middle School (1.7 miles from the subject site)
20 and Lindberg High School (0.9 miles from the subject site). RCW 58.17.110(2) provides
21 that no subdivision be approved without making a written finding of adequate provisions
22 for safe walking conditions for students who walk to and from school and/or bus stops.
23 Tiffany Park Elementary and Lindberg High School are within walking distance of the
24 subject site while Nelson Middle School would require future students to be transported
25 to school via bus.

26 As part of the proposed project, sidewalks would be constructed along on-site roadways
which would connect to the existing sidewalk system providing adequate provisions for
safe walking conditions for students who walk to and from school and/or bus stops.

Sidewalks would provide a route between the project site and nearby Tiffany Park
Elementary School, including available marked crosswalks at the Kirkland Avenue
SE/Lake Youngs Way intersection. The Kirkland Avenue SE/Lake Youngs Way

1 intersection is approximately 300 linear feet from where SE 18th St intersects Lake
2 Youngs Way. Given the number of homes proposed, it is very likely that a large influx of
3 students would attempt to cross Lake Youngs Way SE, at the SE 18th Street intersection,
4 which does not currently have a marked crosswalk. In order to provide a more practical
5 safe route to Tiffany Park Elementary from the project site, a SEPA mitigation measure
6 was issued requiring the applicant provide a marked crosswalk at the intersection of SE
7 18th Street and Lake Youngs Way.

8 No current bus stops exist for this property as it is currently undeveloped. The Renton
9 School District will be making provisions for the location of bus stops for those students
10 who will be attending Nelson Middle School.

11 A School Impact Fee, based on new single-family lots, will also be required in order to
12 mitigate the proposal's potential impacts to Renton School District. The fee is payable to
13 the City as specified by the Renton Municipal Code at the time of building permit
14 application. Currently the fee is assessed at \$5,455.00 per single family residence and
15 would increase to \$5,541.00 on January 1, 2015.

16 **V. CONCLUSIONS OF LAW**

17 1. Authority. RMC 4-7-020(C) and 4-7-050(D)(5) provide that the Hearing Examiner shall
18 hold a hearing and issue a final decision on preliminary plat applications. RMC 4-9-070(R) and
19 RMC 4-8-110(A)(2) grant the Examiner authority to review and make final decisions on SEPA
20 appeals.

21 2. Zoning/Comprehensive Plan Designations. The majority of the subject property is zoned
22 Residential 8 dwelling units per net acre (R-8). A small portion of the subject property is zoned
23 Residential 4 dwelling units per net acre (R-4). Only the R-8 portion of the property is proposed for
24 residential development. The comprehensive plan map land use designation is Residential Single
25 Family (RSF) and Residential Low Density (RLD).

26 **SEPA APPEAL**

3. Review Standard. There are two reasons a DNS can be overturned to overturned: (1) there are
unmitigated probable significant adverse environmental impacts; or (2) the SEPA responsible official
has not undertaken an adequate review of environmental factors. Each grounds for reversal will be
separately addressed below.

1 A. Probable Significant Adverse Environmental Impacts. The primary relevant inquiry for
2 purposes of assessing whether County staff correctly issued a DNS is whether the project as proposed
3 has a probable significant environmental impact. See WAC 197-11-330(1)(b). WAC 197-11-782
4 defines “probable” as follows:

5 *‘Probable’ means likely or reasonably likely to occur, as in ‘a reasonable probability of more*
6 *than a moderate effect on the quality of the environment’ (see WAC 197-11-794). Probable is*
7 *used to distinguish likely impacts from those that merely have a possibility of occurring, but*
8 *are remote or speculative. This is not meant as a strict statistical probability test.*

9 If such impacts are created, conditions will have to be added to the DNS to reduce impacts so there
10 are no probable significant adverse environmental impacts. In the alternative, an environmental
11 impact statement would be required for the project. In assessing the validity of a threshold
12 determination, the determination made by the City’s SEPA responsible official shall be entitled to
13 substantial weight. WAC 197-11-680(3)(a)(viii). An appeal of an MDNS is judicially reviewed
14 under the clearly erroneous standards. Under the clearly erroneous standard, the decision of the
15 SEPA responsible official can only be overturned if, after reviewing the entire record, the decision
16 maker is left with the definite and firm conviction that a mistake has been made. RMC 4-8-110-
17 (E)(12)(b)(v). The procedural determination by the Environmental Review Committee or City staff
18 shall carry substantial weight in any appeal proceeding. RMC 4-8-110(E)(12)(a).

19 B. Adequate Environmental Review

20 The second reason a DNS can be overturned is if the SEPA responsible official did not adequately
21 review environmental impacts in reaching his threshold determination. The SEPA responsible official
22 must make a prima facie showing that he has based his determination upon information reasonably
23 sufficient to evaluate the impacts of a proposal. WAC 197-11-335.

24 C. No Grounds for an EIS.

25 TPWAG has not demonstrated a need for additional SEPA mitigation, environmental review or the
26 issuance of an environmental impact statement. All of the grounds for SEPA appeal are addressed in
Finding of Fact No. 5. As determined in that finding, none of the impacts identified by TPWAG
qualify as probable significant adverse environmental impacts and TPWAG has not identified an
impact for which the SEPA responsible official did not have sufficient information to reasonably
assess impacts.

4. Perimeter Landscaping. MDNS Condition No. 6 is modified to only require 10 foot perimeter
landscaping along the retaining walls that are over four feet in height, specifically in proximity to lots
40, 41, 46, 47, 80, 82, 83-90, 93 and 94.

1 The applicant argues that no perimeter buffering is required because the City's landscaping standards
2 do not require buffering and that those standards should be determinative in assessing the need for
3 landscaping. The applicant is correct up to a point. RCW 36.70B.030(3) and RCW 43.21C.240(2)(a)
4 does allow a city to use its development standards as the exclusive source of mitigation for
5 environmental impacts. However, RCW 43.21C.240(2)(a) provides that in order to use development
6 regulations in this manner the City must make a determination in the course of permit review that the
7 development standards in question are adequately addressed by the development regulations. RCW
8 43.21C.240(4) further clarifies that for development standards to be found to adequately mitigate
9 impacts, imposition of the standards must either avoid or mitigate the impacts; or the legislative body
10 of the city has determined that the development standard sets acceptable levels of impact.

11 Renton's landscaping standards do not adequately address all of the aesthetic impacts created by the
12 proposal. As noted previously, one of the two ways that a development standard can be found to
13 adequately address impacts is if the City Council intended the standard to set acceptable levels of
14 impact. See RCW 43.21C.240(4)(b). The Renton City Council expressly determined that the
15 landscaping standard would not set acceptable levels of aesthetic impact, stating the purpose clause of
16 the landscaping standards that "*it is not the intent of these regulations that rigid and inflexible design
17 standards be imposed, but rather that minimum standards be set.*"

18 The other, more difficult issue involved in ascertaining whether the landscaping standards would
19 adequately address aesthetic impacts is if the standards actually mitigate the impacts. Given the
20 subjectivity of aesthetic perimeter impacts, one would have to conclude that in the vast majority of
21 typical subdivisions the landscaping standards do set an adequate standard. In not imposing any
22 perimeter landscaping requirements between single family residential uses, the City Council must
23 have determined that for the typical subdivision, such landscaping is not necessary. However, the
24 proposed subdivision is not typical. As determined in Finding of Fact No. 6, the proposal will involve
25 up to 16.6 foot high retaining walls that will create a stone wall to the neighborhoods across from it,
26 which in turn can be topped with 6 foot fences. The site visit revealed that no other homes in the
vicinity have such retaining walls or similar edifices bordering on public roads. Consequently, the
impacts of the subdivision are not typical and likely not the type of impact the City Council
considered when it omitted any buffer requirements for adjoining residential uses. Additional
mitigation through SEPA is well justified in this case to mitigate against the impact of retaining
walls.

27 The City's environmental report also cites that buffering is necessary to off-set the impacts of the
28 densities of the proposal, which are higher than adjoining densities. This does not serve as an
29 adequate justification for buffering. Setting a threshold for adverse aesthetic impacts based upon a
30 difference in density or lot sizes is a completely arbitrary action in the absence of any legislative
guidance. The difference in density between the proposal and adjoining uses is not so high that

1 reasonable minds would share the same opinion as to whether the difference is aesthetically adverse.
2 Though both the surrounding areas and the subject are zoned R-8, the developed density of the
3 proposal will not exceed 5.7 dwelling units per acre. Indeed, unlike the retaining walls of the project,
4 differences in residential densities are something that one would reasonably anticipate the Council
5 would have considered in adopting its landscaping standards, and it adopted no perimeter
6 requirements between residential zoning districts with different densities, except as between multi-
family and less intense residential uses. For these reasons, the comparatively higher density of the
proposal does not create a probable significant adverse environmental impact.

7 Another issue with respect to the SEPA's mitigation measure is to ensure that the City has adopted a
8 SEPA policy that requires the impact to be addressed. RCW 43.21C.060 requires that SEPA
9 mitigation must be based upon policies adopted by the local government authority. Interestingly, the
10 City hasn't adopted its development standards as part of its SEPA policies, so the purpose clause of
11 the landscaping regulations, which promote aesthetic compatibility, can't be used. There are plenty of
12 other SEPA policies that promote aesthetic compatibility. RMC 4-2-070(M)(2)(ii) provide that one of
13 the goals of SEPA review is to assure aesthetically pleasing surroundings. The City's comprehensive
14 plan is another adopted SEPA policy. One of its community design goals is to "raise the aesthetic
15 quality of the city". Objective CD-M recognizes that well designed landscaping provides aesthetic
16 appeal and makes an important contribution to the health, safety, economy and general welfare of the
17 community. Policy CD-88 provides that street trees and landscaping should be required for new
development to provide an attractive streetscape in areas subjected to a transition of land uses. All of
these policies are served by the perimeter landscaping required by this decision, since such
landscaping will raise the aesthetic quality of the city, provide for aesthetic appeal and buffer against
the transition from the higher density residential development and its associated retaining walls to the
lower surrounding residential densities.

18 The applicants argue in their briefing that requiring perimeter landscaping would be unreasonable
19 because homes would lose yard space. In the alternative, of course, the applicant may have to lose
20 some lots. Given the judicial construction of "reasonable" in due process and takings cases, the loss
of a few lots or yard space would not be considered unreasonable.

21 As a final matter, SEPA mitigation can only be used to impose mitigation against probable significant
22 adverse environmental impacts. As determined in the Finding of Fact No. 5, the solid walls created
23 by the higher portions of the retaining wall easily qualify. No reasonable minds could differ on the
24 opinion that high retaining walls are at odds with the general design of the community and create a
25 mass of rock or concrete wall that is aesthetically adverse. The remaining issue is how high the wall
26 should be to be considered adverse. Again, reference to existing codes is useful as it provides an
objective and consistent standard for application. Retaining walls fewer than four feet in height do
not require building permit review. Consequently, it can be reasonably anticipated that decorative

1 retaining walls under four feet may not be that uncommon, whereas property owners will only go
2 through the time and expense of building permit review for higher walls when they are necessitated
3 for stability as opposed to decorative purposes. A four feet height is also still low enough to retain the
4 views of surrounding trees, vistas and other natural and landscaped features. For this reason, those
5 portions of the proposal with retaining walls that exceed four feet in height shall be subject to the 15
6 foot wide perimeter landscaping requirement imposed in the MDNS.

5. Retaining Wall Height. The six-foot retaining wall height limitation recommended by staff
6 will not be adopted. Renton does not have any standards imposing height limits on retaining walls
7 outside of setback areas. There is nothing in the record that establishes the potential for any adverse
8 impacts other than aesthetic, and those impacts will be adequately addressed by the staff's
9 recommended landscape perimeter.

10 The retaining wall condition presents two code interpretation issues: (1) whether the City's fence and
11 hedge regulation (RMC 10-4-040) applies to retaining walls, and (2) if RMC 10-4-040 does apply,
12 whether it imposes a six foot height limit on retaining walls. As to the first issue, RMC 10-4-040
13 probably does apply to retaining walls. RMC 4-4-040(A) provides that the purpose of RMC 4-4-050
14 is to regulate the material and height of "fences and hedges." "Fence" is not defined in the RMC.
15 However, walls are addressed throughout RMC 4-4-040. Most pertinent, RMC 4-4-040(C)(1)
16 provides in relevant part that, "In cases where a wall is used instead of a fence, height shall be
17 measured from the top surface of the wall to the ground on the high side of the wall." This sentence
18 strongly suggests that the wall in question can include retaining walls, since the sentence
19 acknowledges that one side of the wall can be at a higher grade than the other. Retaining walls that
20 project above the higher grade would meet this definition. The applicant argues that this reference to
21 "wall" as well as others pertains to "European or California-style stone walls." Nothing in the
22 language of RMC 4-4-040 suggests that walls be limited to stone walls.

23 In addition to providing some clarity on the applicability of RMC 4-4-040 to retaining walls, RMC 4-
24 4-040(C)(1) also establishes that retaining walls that do not project past the higher grade have a
25 height of zero feet, which is below all the height limits set for walls by RMC 4-4-040. The sentence
26 clearly states that retaining wall height is to be measured from the "high side of the wall", which
would be zero in the case of the retaining walls proposed by the applicant. This result makes sense in
light of the other limitation of RMC 4-4-040, that it applies only "in cases where walls are used
instead of a fence." If a retaining wall does not extend above the higher grade, it doesn't take the
place of a fence and hence is not subject to the height limit. In short, retaining walls that only serve to
retain soil, as proposed by the applicant, are not subject to the height limits of RMC 4-4-040.
Practically speaking, this means that RMC 4-4-040 doesn't apply to retaining walls solely used to
stabilize grade separations, since no other provisions in RMC 4-4-040 apply as well.

1 Since the six foot height limit is not required RMC 4-4-040, staff would have to find some other code
2 provision to require the fence. Plat criteria requiring conformance to the comprehensive plan, see
3 RMC 4-7-080(I)(1), include the policies addressing aesthetic impacts identified in COL No. 5.A.1.
4 As determined in Finding of Fact No.6.C, the aesthetic impacts of the retaining walls can be fully
5 mitigated by perimeter landscaping. Staff acknowledged as much at page 13 of the staff report.
6 Therefore, the record contains no adequate justification for a limitation on retaining wall height.

7 6. Loss of Recreational Use. The appellants assert that the project site has been used as a
8 recreational resource by the surrounding community for decades and that its loss is a probable
9 significant adverse environmental impact. The loss of recreational use from the property is not an
10 environmental impact of the proposal subject to SEPA review and mitigation. Even if it were, that
11 loss does not result in any violation of the City's detailed park policies and regulations, compliance of
12 which assures that development will not create demand upon park facilities that exceeds legislatively
13 adopted level of service standards.

14 As a preliminary matter, it should be noted that this decision does not address the prescriptive rights
15 claims made by the appellants to the project site. As ruled in Ex. AG, the Examiner has no authority
16 to address the prescriptive easement claims asserted by the SEPA appellants. Practically speaking,
17 this decision will not prejudice the appellants' prescriptive rights claims if the appellants diligently
18 pursue those claims in superior court, the proper forum for such a claim. Should the appellants
19 actually succeed in persuading a court that the public has prescriptive rights to the public school
20 property (which appears unlikely at this juncture), they could acquire injunctive or other judicial
21 relief to prevent development of the proposal.

22 No additional SEPA review or mitigation is merited on the recreational use issue because the loss of
23 that use cannot be considered an impact of the proposal. In the absence of any prescriptive rights to
24 the project site, project opponents are left with the argument that the applicant should fund further
25 environmental review or provide for additional mitigation to compensate for the fact that either (1)
26 the applicant was benevolent enough to allow the public to use its property; or (2) the public
repeatedly trespassed on the applicant's property. From an equitable standpoint, such a position
borders on the absurd. More importantly, the applicant could prevent the public from using its
property at any time, with or without the proposal. For this reason, the loss of recreational use should
not be considered an impact of the proposal for purposes of environmental review.

Even if loss of the recreational use of the site could be legitimately considered an environmental
impact for purposes of SEPA, its loss would not qualify as a probable significant adverse
environmental impact. The City's comprehensive plan, park impact fees and open space requirements
are all designed to assure that each developer is required to provide its proportionate share
contribution to the park needs of the city and that the park needs of the public will be met as

development progresses. The applicant's proposal is consistent and compliant with all of these requirements. In point of fact the applicant will be required to pay park impact fees at the time of building permit issuance. The applicant is also providing for 1.2 acres of open space, even though no open space is required for subdivisions in the R-8 zone. As would be expected, none of the City's park policies or regulations penalize a developer for withdrawing the ability of the public to use or trespass upon its property. Since the applicant is acting fully within the requirements of the City's detailed park policies and regulations, its proposal cannot be considered to create adverse impacts to the City's (i.e. public's) parks and recreational system.

PRELIMINARY PLAT

6. Review Criteria. Chapter 4-7 RMC governs the criteria for preliminary review. Applicable standards are quoted below in italics and applied through corresponding conclusions of law.

RMC 4-7-080(B): *A subdivision shall be consistent with the following principles of acceptability:*

- 1. Legal Lots: Create legal building sites which comply with all provisions of the City Zoning Code.*
- 2. Access: Establish access to a public road for each segregated parcel.*
- 3. Physical Characteristics: Have suitable physical characteristics. A proposed plat may be denied because of flood, inundation, or wetland conditions. Construction of protective improvements may be required as a condition of approval, and such improvements shall be noted on the final plat.*
- 4. Drainage: Make adequate provision for drainage ways, streets, alleys, other public ways, water supplies and sanitary wastes.*

RMC 4-4-080(I)(7):

- a. Benefits of: Joint use driveways reduce the number of curb cuts along individual streets and thereby improve safety and reduce congestion while providing for additional on-street parking opportunities. Joint use driveways should be encouraged when feasible and appropriate. (Ord. 4517, 5-8-1995)*
- b. Where Permitted: Adjoining commercial or industrial uses may utilize a joint use driveway where such joint use driveway reduces the total number of driveways entering the street network, subject to the approval of the Department of Community and Economic Development. Joint use driveways must be created upon the common property line of the properties served or through the granting of a permanent access easement when said driveway does not exist upon a common property line. Joint use access to the driveway shall be assured by easement or other legal form acceptable to the City.*

1 7. As to compliance with the Zoning Code, Finding I(2) of the staff report in the portions
2 related to density, lot dimensions, setbacks and building standards (Pages 12-13) are adopted by
3 reference as if set forth in full, with all associated recommended conditions of approval adopted by
this decision as well.

4 As depicted in the plat map, Staff Report Ex. 2, most of the lots will directly access a public Road
5 (Road A, SE 18th Street or 124th Place SE). As noted in Finding of Fact 6.G, shared driveways are
6 proposed for Lots 12-14, Lots 15-17, Lots 38-40 and Lots 79-81. Staff additionally suggests Lot 11
7 and Lots 78 take access from the shared driveway. There are no topographical or critical areas issues
8 to preclude these three lots from having shared access. The shared access would reduce the number
9 of curb cuts at the entrance of the plat at 124th Place SE and along the cul de sac at the end of the
10 same street. Potential vehicle and pedestrian conflicts would be lessened by consolidating driveways.
11 However, the applicant testified use of the shared driveway for Lot 11 is problematic because the
12 driveway would be at an angle to the roadway which would also change the design of the house to
13 allow side loading of the garage. The applicant objected to the inclusion of Lot 78 in a shared
14 driveway. There appear to be no material differences between Lots 78 and 81 in terms of orientation
15 or width. As these lots are very near to the subdivision entrance, limiting potential vehicle and
16 pedestrian conflicts is desirable. Though a change to the design of the house on Lot 11 is not an
unreasonable accommodation to allow for vehicular and pedestrian safety at the cul de sac, the
driveway for Lot 11 would be at an undesirable angle to the shared driveway. The cul de sac serves a
limited number of houses. In this instance, the safety effect of removing one driveway access to a cul
de sac does not outweigh the impact to Lot 11 caused by the creation of off kilter driveway. The
approval will be conditioned to require the inclusion of Lots 12-14, Lots 15-17, Lots 38-40 and Lots
78-81 in shared driveways.

17 As determined in Finding of Fact No. 5 and 6, the project is adequately designed to prevent any
18 impacts to critical areas and will not cause flooding problems. As determined in Finding of Fact No.
19 6, the proposal provides for adequate public facilities.

20 **RMC 4-7-080(I)(1):** *...The Hearing Examiner shall assure conformance with the general purposes*
21 *of the Comprehensive Plan and adopted standards...*

22 8. The proposed preliminary plat is consistent with the Renton Comprehensive Plan as outlined
23 in Finding I(1) of the staff report, which is incorporated by this reference as if set forth in full.

24 **RMC 4-7-120(A):** *No plan for the replatting, subdivision, or dedication of any areas shall be*
25 *approved by the Hearing Examiner unless the streets shown therein are connected by surfaced road*
26 *or street (according to City specifications) to an existing street or highway.*

1 9. As shown in Staff Report Ex. 2, the internal road system connects to SE 18th Street and 124th
2 Place SE, both public roads.**RMC 4-7-120(B):** *The location of all streets shall conform to any*
3 *adopted plans for streets in the City.*

4 10. The City's adopted street plans are not addressed in the staff report or anywhere else in the
5 administrative record. However, the proposed internal road system extends two existing stub roads,
6 SE 18th Street and 124th Place SE. Both extensions will be constructed to City road standards.
7 Consequently, the criterion above is construed as satisfied by the proposal.

8 **RMC 4-7-120(C):** *If a subdivision is located in the area of an officially designed [sic] trail,*
9 *provisions shall be made for reservation of the right-of-way or for easements to the City for trail*
10 *purposes.*

11 11. According to the Renton Trails and Bikeways Map (Exhibit 20) a pedestrian trail is
12 designated within the Seattle Pipeline abutting the site. The applicant would be required to obtain
13 right-of-way or an access easement across the pipeline for secondary access via 124th Place SE (see
14 Finding 35.6, Streets). In addition, the applicant would be required to provide a safe crossing for the
15 designated trail across the extension of 124th Place SE. As a condition of approval, the applicant
16 shall submit a revised plat plan depicting a safe pedestrian crossing, across the 124th Place SE
17 extension, for the Seattle Waterline Pedestrian Trail.

18 **RMC 4-7-130(C):** *A plat, short plat, subdivision or dedication shall be prepared in conformance*
19 *with the following provisions:*

20 1. *Land Unsuitable for Subdivision: Land which is found to be unsuitable for subdivision includes*
21 *land with features likely to be harmful to the safety and general health of the future residents (such*
22 *as lands adversely affected by flooding, steep slopes, or rock formations). Land which the*
23 *Department or the Hearing Examiner considers inappropriate for subdivision shall not be*
24 *subdivided unless adequate safeguards are provided against these adverse conditions.*

25 *a. Flooding/Inundation: If any portion of the land within the boundary of a preliminary plat*
26 *is subject to flooding or inundation, that portion of the subdivision must have the approval of*
the State according to chapter 86.16 RCW before the Department and the Hearing Examiner
shall consider such subdivision.

b. Steep Slopes: A plat, short plat, subdivision or dedication which would result in the
creation of a lot or lots that primarily have slopes forty percent (40%) or greater as
measured per RMC 4-3-050J1a, without adequate area at lesser slopes upon which
development may occur, shall not be approved.

1 ...

2 *3. Land Clearing and Tree Retention: Shall comply with RMC 4-4-130, Tree Retention and Land*
3 *Clearing Regulations.*

4 *4. Streams:*

5 *a. Preservation: Every reasonable effort shall be made to preserve existing streams, bodies*
6 *of water, and wetland areas.*

7 *b. Method: If a stream passes through any of the subject property, a plan shall be presented*
8 *which indicates how the stream will be preserved. The methodologies used should include an*
9 *overflow area, and an attempt to minimize the disturbance of the natural channel and stream*
10 *bed.*

11 *c. Culverting: The piping or tunneling of water shall be discouraged and allowed only when*
12 *going under streets.*

13 *d. Clean Water: Every effort shall be made to keep all streams and bodies of water clear of*
14 *debris and pollutants.*

15 12. The land is suitable for a subdivision. As determined in Finding of Fact 5.B, the stormwater
16 design assures that it will not contribute to flooding and all critical areas will be protected. As
17 determined in Finding of Fact No. 5.B, no lots with primarily 40% slopes will be created. No piping
18 or tunneling of streams is proposed. Trees will be retained as required by RMC 4-4-130 as
19 determined in Finding of Fact No. 5.A.

20 **RMC 4-7-140:** *Approval of all subdivisions located in either single family residential or multi-*
21 *family residential zones as defined in the Zoning Code shall be contingent upon the subdivider's*
22 *dedication of land or providing fees in lieu of dedication to the City, all as necessary to mitigate the*
23 *adverse effects of development upon the existing park and recreation service levels. The*
24 *requirements and procedures for this mitigation shall be per the City of Renton Parks Mitigation*
25 *Resolution.*

26 13. City ordinances require the payment of park impact fees prior to building permit issuance.
See also the discussion on loss of recreational use in Conclusion of Law 3.F above.

RMC 4-7-150(A): *The proposed street system shall extend and create connections between existing*
streets unless otherwise approved by the Public Works Department. Prior to approving a street
system that does not extend or connect, the Reviewing Official shall find that such exception shall

1 *meet the requirements of subsection E3 of this Section. The roadway classifications shall be as*
2 *defined and designated by the Department.*

3 14. As shown in Staff Report Ex. 2, the proposed internal roads extend two existing stubs, SE
4 18th Street and 124th Place SE. The internal Road A creates a loop connection between the two
5 public streets which did not exist previously.

6 **RMC 4-7-150(B):** *All proposed street names shall be approved by the City.*

7 15. As conditioned.

8 **RMC 4-7-150(C):** *Streets intersecting with existing or proposed public highways, major or*
9 *secondary arterials shall be held to a minimum.*

10 16. None of the proposed streets intersect with a public highway or arterial.

11 **RMC 4-7-150(D):** *The alignment of all streets shall be reviewed and approved by the Public Works*
12 *Department. The street standards set by RMC 4-6-060 shall apply unless otherwise approved. Street*
13 *alignment offsets of less than one hundred twenty five feet (125') are not desirable, but may be*
14 *approved by the Department upon a showing of need but only after provision of all necessary safety*
15 *measures.*

16 17. As determined in Finding of Fact 6, the Public Works Department has reviewed and
17 approved the adequacy of streets, which includes compliance with applicable street standards.

18 **RMC 4-7-150(E):**

19 1. *Grid: A grid street pattern shall be used to connect existing and new development and shall be the*
20 *predominant street pattern in any subdivision permitted by this Section.*

21 2. *Linkages: Linkages, including streets, sidewalks, pedestrian or bike paths, shall be provided*
22 *within and between neighborhoods when they can create a continuous and interconnected network*
23 *of roads and pathways. Implementation of this requirement shall comply with Comprehensive Plan*
24 *Transportation Element Objective T-A and Policies T-9 through T-16 and Community Design*
25 *Element, Objective CD-M and Policies CD-50 and CD-60.*

26 3. *Exceptions:*

a. The grid pattern may be adjusted to a “flexible grid” by reducing the number of linkages
or the alignment between roads, where the following factors are present on site:

i. Infeasible due to topographical/environmental constraints; and/or

1 ii. *Substantial improvements are existing.*

2 4. *Connections: Prior to adoption of a complete grid street plan, reasonable connections that link*
3 *existing portions of the grid system shall be made. At a minimum, stub streets shall be required*
4 *within subdivisions to allow future connectivity.*

5 5. *Alley Access: Alley access is the preferred street pattern except for properties in the Residential*
6 *Low Density land use designation. The Residential Low Density land use designation includes the*
7 *RC, R-1, and R-4 zones. Prior to approval of a plat without alley access, the Reviewing Official shall*
8 *evaluate an alley layout and determine that the use of alley(s) is not feasible...*

9 6. *Alternative Configurations: Offset or loop roads are the preferred alternative configurations.*

10 7. *Cul-de-Sac Streets: Cul-de-sac streets may only be permitted by the Reviewing Official where due*
11 *to demonstrable physical constraints no future connection to a larger street pattern is physically*
12 *possible.*

13 18. As shown in Staff Report Ex. 2, the proposed street system contributes to the grid system by
14 creating loop access which did not previously exist. Both of the intersecting public streets are
15 currently stub roads. Alley access is not required because the proposed density does not meet the 6
dwelling unit/acre threshold. The internal roads are looped as encouraged by the criterion above.
The cul de sacs proposed cannot be extended to connect the road network because of the presence of
two pipeline easements. The criterion is met.

16 **RMC 4-7-150(F):** *All adjacent rights-of-way and new rights-of-way dedicated as part of the plat,*
17 *including streets, roads, and alleys, shall be graded to their full width and the pavement and*
18 *sidewalks shall be constructed as specified in the street standards or deferred by the*
19 *Planning/Building/Public Works Administrator or his/her designee.*

20 19. As proposed all roads will meet City street profile standards for road with and frontage
improvements.

21 **RMC 4-7-150(G):** *Streets that may be extended in the event of future adjacent platting shall be*
22 *required to be dedicated to the plat boundary line. Extensions of greater depth than an average lot*
23 *shall be improved with temporary turnarounds. Dedication of a full-width boundary street shall be*
24 *required in certain instances to facilitate future development.*

25 20. As shown in Ex. 2 to the Staff Report, the proposed roads may not be extended due to the
26 presence of pipeline easements. The subject is surrounded on all sides by existing residential
development.

1
2 **RMC 4-7-170(A):** *Insofar as practical, side lot lines shall be at right angles to street lines or radial*
3 *to curved street lines.*

4 23. As depicted in Staff Report Ex. 2, the side lines are in conformance with the requirement
5 quoted above.

6 **RMC 4-7-170(B):** *Each lot must have access to a public street or road. Access may be by private*
7 *access easement street per the requirements of the street standards.*

8 24. As previously determined and conditioned, each lot has access to a public street.

9 **RMC 4-7-170(C):** *The size, shape, and orientation of lots shall meet the minimum area and width*
10 *requirements of the applicable zoning classification and shall be appropriate for the type of*
11 *development and use contemplated. Further subdivision of lots within a plat approved through the*
12 *provisions of this Chapter must be consistent with the then-current applicable maximum density*
13 *requirement as measured within the plat as a whole.*

14 25. As previously determined and as conditioned, the proposed lots comply with the zoning
15 standards of the R-8 zone, which includes area, width and density.

16 **RMC 4-7-170(D):** *Width between side lot lines at their foremost points (i.e., the points where the*
17 *side lot lines intersect with the street right-of-way line) shall not be less than eighty percent (80%) of*
18 *the required lot width except in the cases of (1) pipestem lots, which shall have a minimum width of*
19 *twenty feet (20') and (2) lots on a street curve or the turning circle of cul-de-sac (radial lots), which*
20 *shall be a minimum of thirty five feet (35').*

21 26. The applicant has proposed several lots including Lots 14, 15 and 38 which do not meet the
22 minimum frontage width requirement. As discussed below in Conclusion of Law 25, each of these
23 lots must be eliminated or revised to meet the minimum frontage width requirements. Or, as
24 discussed in Conclusion of Law 5 above, the applicant may also submit an alternative plat plan
25 which includes a combination of all lots fronting onto a public street meeting minimum lot widths
26 and those portions of the lots now proposed for shared driveway/access easements.

RMC 4-7-170(E): *No residentially zoned lot shall have a depth-to-width ratio greater than four-to-*
one (4:1).

27. As conditioned, all pipestem lots will be eliminated or revised to meet minimum lot width
requirements which will bring all of the lots into compliance with this criterion.

1 **RMC 4-7-170(F):** *All lot corners at intersections of dedicated public rights-of-way, except alleys,*
2 *shall have minimum radius of fifteen feet (15').*

3 28. As proposed all lots meet this criterion.

4 **RMC 4-7-170(G):** *Pipestem lots may be permitted for new plats to achieve the minimum density*
5 *within the Zoning Code when there is no other feasible alternative to achieving the minimum density.*

6 *Minimum Lot Size and Pipestem Width and Length:* *The pipestem shall not exceed one hundred fifty*
7 *feet (150') in length and not be less than twenty feet (20') in width. The portion of the lot narrower*
8 *than eighty percent (80%) of the minimum permitted width shall not be used for lot area calculations*
9 *or for the measurement of required front yard setbacks. Land area included in private access*
10 *easements shall not be included in lot area calculations. Pipestem lots shall not abut one another.*

11 29. The proposal exceeds the minimum density of 4.0 dwelling units per acre by 1.7 dwelling
12 units per acre and therefore pipestem lots are prohibited. The applicant has proposed several
13 pipestem lots including Lots 12, 14, 15, 17, 38, 40 and 79. As a condition of approval, each of these
14 lots must be eliminated or revised to meet the minimum frontage width requirements. As an
15 alternative, the applicant may also submit an alternative plat plan which includes a combination of
16 all lots fronting onto a public street meeting minimum lot widths and those portions of the lots now
17 proposed for shared driveway/access easements as discussed above in Conclusion of Law 5.

18 **RMC 4-7-190(A):** *Easements may be required for the maintenance and operation of utilities as*
19 *specified by the Department.*

20 30. As conditioned.

21 **RMC 4-7-190(B):** *Due regard shall be shown to all natural features such as large trees,*
22 *watercourses, and similar community assets. Such natural features should be preserved, thereby*
23 *adding attractiveness and value to the property.*

24 31. Trees will be retained as required by City code as determined in Finding of Fact No. 5. There
25 are no other natural features that need preservation as contemplated in the criterion quoted above.

26 **RMC 4-7-200(A):** *Unless septic tanks are specifically approved by the Public Works Department*
27 *and the King County Health Department, sanitary sewers shall be provided by the developer at no*
28 *cost to the City and designed in accordance with City standards. Side sewer lines shall be installed*
29 *eight feet (8') into each lot if sanitary sewer mains are available, or provided with the subdivision*
30 *development.*

31 32. As conditioned.

1 **RMC 4-7-200(B):** *An adequate drainage system shall be provided for the proper drainage of all*
2 *surface water. Cross drains shall be provided to accommodate all natural water flow and shall be of*
3 *sufficient length to permit full-width roadway and required slopes. The drainage system shall be*
4 *designed per the requirements of RMC 4-6-030, Drainage (Surface Water) Standards. The drainage*
5 *system shall include detention capacity for the new street areas. Residential plats shall also include*
6 *detention capacity for future development of the lots. Water quality features shall also be designed to*
7 *provide capacity for the new street paving for the plat.*

8 33. The proposal provides for adequate drainage that is in conformance with applicable City
9 drainage standards as determined in Findings of Fact No. 5 and 6. The City's stormwater standards,
10 which are incorporated into the technical information report and will be further implemented during
11 civil plan review, ensure compliance with all of the standards in the criterion quoted above.

12 **RMC 4-7-200(C):** *The water distribution system including the locations of fire hydrants shall be*
13 *designed and installed in accordance with City standards as defined by the Department and Fire*
14 *Department requirements.*

15 34. Compliance with City water system design standards is assured during final plat review.

16 **RMC 4-7-200(D):** *All utilities designed to serve the subdivision shall be placed underground. Any*
17 *utilities installed in the parking strip shall be placed in such a manner and depth to permit the*
18 *planting of trees. Those utilities to be located beneath paved surfaces shall be installed, including all*
19 *service connections, as approved by the Department. Such installation shall be completed and*
20 *approved prior to the application of any surface material. Easements may be required for the*
21 *maintenance and operation of utilities as specified by the Department.*

22 35. All utilities including the stormwater vault are proposed to be placed underground. As
23 conditioned, utility installation will be inspected and approved prior to paving of surface materials
24 above the utilities.

25 **RMC 4-7-200(E):** *Any cable TV conduits shall be undergrounded at the same time as other basic*
26 *utilities are installed to serve each lot. Conduit for service connections shall be laid to each lot line*
by subdivider as to obviate the necessity for disturbing the street area, including sidewalks, or alley
improvements when such service connections are extended to serve any building. The cost of
trenching, conduit, pedestals and/or vaults and laterals as well as easements therefore required to
bring service to the development shall be borne by the developer and/or land owner. The subdivider
shall be responsible only for conduit to serve his development. Conduit ends shall be elbowed to
final ground elevation and capped. The cable TV company shall provide maps and specifications to
the subdivider and shall inspect the conduit and certify to the City that it is properly installed.

1 36. As conditioned.

2 **RMC 4-7-210:**

3 *A. MONUMENTS:*

4 *Concrete permanent control monuments shall be established at each and every controlling corner of*
5 *the subdivision. Interior monuments shall be located as determined by the Department. All surveys*
6 *shall be per the City of Renton surveying standards.*

7 *B. SURVEY:*

8 *All other lot corners shall be marked per the City surveying standards.*

9 *C. STREET SIGNS:*

10 *The subdivider shall install all street name signs necessary in the subdivision.*

11 37. As conditioned.

12
13 **VI. DECISION**

14 The proposed 96-lot preliminary plat and critical areas exemption as depicted in Ex. 2 and described
15 in this decision is approved, subject to the following conditions:

16 The proposed preliminary plat and critical areas exemption as depicted in Ex. 2 and described in this
17 decision is approved, subject to the following conditions:

- 18 1. The applicant shall comply with the mitigation measures issued as part of the Determination
19 of Non-Significance Mitigated, dated September 22, 2014 except as modified below:

- 20 a. MDNS Condition 1 shall be revised as follows:

21 All earthwork performed, implemented by the applicant, shall be consistent with the
22 recommendations of the geotechnical report, prepared by Associated Earth Sciences,
23 Inc., dated September 28, 2012 or consistent with the recommendations of the final
24 City-approved geotechnical report.

- 25 b. MDNS Condition 6 shall be stricken and replaced with the following:

1 The applicant shall revise its landscaping plan to provide for a 10 foot wide on-site
2 landscape strip for all lots and a 10 foot wide, site obscuring perimeter landscaping
3 adjacent to areas where the retaining walls are four or more feet in height, specifically
4 in the perimeter areas close to Lots 40, 41, 46, 47, 80, 82, 83-90, 93 and 94.
5 Landscaping at maturity must exceed the height of the adjacent retaining wall. The
6 final detailed landscape plan shall be submitted to and approved by the Current
7 Planning Project Manager prior to construction permit approval. Such landscaping
8 shall include a mixture of trees, shrubs, and groundcover as approved by the
9 Department of Community and Economic Development.

- 10 2. The applicant shall be required to demonstrate compliance with the minimum 50-foot lot
11 width requirement for all lots with less than 50 feet in width at the foremost points (where the
12 side lot lines intersect with the street right-of-way line) pursuant to RMC 4-11-120. The
13 average distance between the side lines connecting front and rear lot lines shall be submitted
14 to the Current Planning Project Manager prior to construction permit approval.
- 15 3. The applicant shall be required to submit a revised plat plan and landscaping plan depicting
16 curb bulb-outs where on-street parking is located. The revised plat and landscaping plans
17 shall be submitted to and approved by the Current Planning Project Manager prior to
18 construction permit approval.
- 19 4. The applicant shall be required to submit a revised plat and landscaping plan, which are
20 elements of the City's required construction plan set, depicting curb bulbouts at street
21 intersections where on-street parking is located or calling for no curb bulbouts and
22 installation of "no parking" designations where street parking is prohibited at street
23 intersections. The revised plat and landscaping plan shall be submitted to and approved by
24 the Current Planning Project Manager prior to construction permit approval.
- 25 5. The applicant shall eliminate individual access directly from internal public streets for those
26 lots abutting private streets and/or shared driveway access easements, specifically Lots 12-
14, Lots 15-17, Lots 38-40 and Lots 78-81 in shared driveways. Said lots shall be required to
take access from the abutting private street and/or access easement and shall not exceed
access thresholds pursuant to RMC 4-6-060.J and K. Lot 11 may access the public street
directly. The revised plat plan shall be submitted to, and approved by, the Current Planning
Project Manager prior to construction permit approval. Furthermore, the access restriction for
such lots is required to be noted on the face of the Final Plat prior to recording.
6. The applicant shall revise the proposed mitigation plan to depict all retaining walls on site,
including lock & load walls on the north and east sides of Wetlands B and C. The applicant

1 shall also identify if proposed walls are anticipated to impact critical area buffers and provide
2 appropriate mitigation for such impacts. A Final Mitigation Plan, pursuant to RMC 4-8-
3 120.W, shall be submitted to, and approved by, the Current Planning Project Manager prior
4 to construction permit approval.

5 7. The temporary buffer impacts consisting of minor intrusions or disturbance from
6 construction activities shall be restored with appropriate grading, soil amendments, and the
7 planting of native species to the satisfaction of the Current Planning Project Manager. The
8 revised mitigation plan shall be submitted to, and approved by, the Current Planning Project
9 Manager prior to construction permit approval.

10 8. The existing wetland mitigation plan already assures that 1,331 square feet of additional
11 wetland buffer area is being provided to mitigate for both existing buffer impacts to Wetland
12 E that are not associated with the Plat, as well as the loss of 14 square feet of the Wetland E
13 buffer which loss is associated with the extension of SE 18th Street. To provide an additional
14 offset for the impacts resulting from the requested exemption associated with the fill of 14
15 square feet of buffer to extend SE 18th Street. The applicant has agreed to provide and shall
16 provide enhancement to the Wetland 'E' buffer immediately abutting SE 18th Street, as well
17 as enhanced plantings adjoining that buffer area within Tract M. A revised mitigation plan
18 shall be submitted to, and approved by, the Current Planning Project Manager prior to
19 construction permit approval.

20 9. The applicant shall be required to establish a Native Growth Protection Easement over those
21 parts of the site encompassing wetlands and their associated buffers and place fencing and
22 signage along the outer buffer edge prior to Final Plat approval.

23 10. The applicant shall be required to submit a fill source statement, if fill materials are brought
24 to the site, in order to the City to ensure only clean fill is imported prior to construction.

25 11. The applicant shall provide a final Tree Retention Plan, complying with the 30% tree
26 retention SEPA mitigation measure while demonstrating proposed retaining walls would not
impact trees proposed for retention. The Final Tree Retention Plan shall be submitted to, and
approved by, the Current Planning Project Manager prior to construction permit approval.

12. The applicant shall submit a revised plat plan, which is an element of the City's required
construction plan set, depicting a safe pedestrian crossing, across the 124th Place SE
extension, for the Seattle Waterline Pedestrian Trail. The revised plat plan, as part of the
construction plan set, shall be submitted to, and approved by the Current Planning Project

1 Manager, Community Services Department, and the Transportation Department prior to
2 construction permit approval.

3 13. The applicant shall be required to obtain right-of-way or a public access easement through
4 the Cedar River Pipeline, for the extension of 124th Place SE, to the satisfaction of the Plan
5 Reviewer prior to construction permit approval.

6 14. Pedestrian lighting shall be depicted on the lighting plan at the entrances of Tracts C and E
7 (from the proposed right-of-way). The lighting plan shall be submitted to, and approved by,
8 the Current Planning Project Manager and the Plan Reviewer prior to construction permit
9 approval.


10 15. The Preliminary Plat plan shall be revised so that no more than 4 lots may gain access via a
11 shared driveway and that at least one such lot shall meet minimum lot width requirements
12 along a street frontage pursuant to RMC 4-7-170.D (a minimum of 80% of the required lot
13 width/40 feet or 35 feet along a street curve). The lot(s) which provides physical frontage
14 along the street shall only be allowed vehicular access from the shared private driveway. In
15 order to provide shared access, Lots 14, 17 and 38 shall be widened to 35 feet and take
16 primary access from the shared driveway. The revised plat plan shall be submitted to and
17 approved by the Current Planning Project Manager prior to construction permit approval.

18 16. The plat plan shall be revised so that all lots have no less than a 40-foot lot width where side
19 lot lines intersect with the street right of way or for radial lots be a minimum of 35 feet in
20 width. Specifically, proposed Lots 14, 17, and 38 would be required to be widened to 35 feet
21 in order to comply with the condition. The revised plat plan shall be submitted to and
22 approved by the Current Planning Project Manager prior to construction permit approval.

23 17. The applicant shall submit a revised plat plan depicting the elimination of all pipestem lots
24 (lots which are less than 40 feet in width where the side lot lines intersect with the street
25 right-of-way or for radial lots are less than 35 feet) within the subdivision. Specifically,
26 proposed Lots 12, 14, 15, 17, 38, 40, and 79 would be required to be eliminated or revised to
meet minimum frontage width requirements. The applicant may also submit an alternative
plat plan which includes a combination of all lots fronting onto a public street meeting
minimum lot widths and those portions of the lots now proposed for shared driveway/access
easements could be placed in Shared Driveway Tracts with easements placed over them
pursuant to RMC 4-6-060, Street Standards. The revised plat plan shall be submitted to and
approved by the Current Planning Project Manager prior to construction permit approval.

- 1 18. Any proposal to convert the Stormwater vault within Tract A to a Stormwater detention pond
2 be considered a Major Plat Amendment subject to the requirements outlined under RMC 4-7-
3 080M.2.
- 4 19. The applicant shall be required to create a homeowners' association and maintenance
5 agreement(s) for the shared utilities, landscape areas and maintenance and responsibilities for
6 all shared improvements of this development. A draft of the document(s) shall be submitted
7 to Current Planning Project Manager for review and approval by the City Attorney and
8 Property Services section prior to the recording of the final plat.
- 9 20. The applicant shall submit the results of the Phase 1 Environmental Site Assessment to the
10 City for review. Appropriate mitigation, if any, shall be completed prior to issuance of
11 building permits.
- 12 21. All road names shall be approved by the City.
- 13 22. Easements may be required for the maintenance and operation of utilities as specified by the
14 Department.
- 15 23. Sanitary sewers shall be provided by the developer at no cost to the City and designed in
16 accordance with City standards. Side sewer lines shall be installed eight feet (8') into each lot
17 if sanitary sewer mains are available, or provided with the subdivision development.
- 18 24. Any cable TV conduits shall be undergrounded at the same time as other basic utilities are
19 installed to serve each lot. Conduit for service connections shall be laid to each lot line.
- 20 25. Concrete permanent control monuments shall be established at each and every controlling
21 corner of the subdivision. Interior monuments shall be located as determined by the
22 Department. All surveys shall be per the City of Renton surveying standards. All other lot
23 corners shall be marked per the City surveying standards. The subdivider shall install all
24 street name signs necessary in the subdivision.

25 DATED this 7th day of January, 2015.

26 
Phil A. Olbrechts

City of Renton Hearing Examiner

APPEAL RIGHTS AND VALUATION NOTICES

RMC 4-8-080 provides that the final decision of the hearing examiner is subject to appeal to the Renton City Council. RMC 4-8-110(E)(14) requires appeals of the hearing examiner's decision to be filed within fourteen (14) calendar days from the date of the hearing examiner's decision. A request for reconsideration to the hearing examiner may also be filed within this 14 day appeal period as identified in RMC 4-8-110(E)(13) and RMC 4-8-100(G)(9). A new fourteen (14) day appeal period shall commence upon the issuance of the reconsideration. Additional information regarding the appeal process may be obtained from the City Clerk's Office, Renton City Hall – 7th floor, (425) 430-6510.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.